

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

RANDOLPH J. THURBER,

Plaintiff,

V.

**STATE OF NEBRASKA,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, TERESA TACK-
STOGDILL, and JONI GEBHARD,**

Defendants.

CASE NO. 4:06CV3174

ORDER

The matter before the Court is Plaintiff Randolph Thurber's Motion for Permission of Court to File Amended Complaint (Filing No. 51). Thurber originally filed his Complaint (Filing No. 1) with this Court on July 25, 2006. After three motions to dismiss by the Defendants, Thurber filed his Amended Complaint (Filing No. 32). Thurber then attempted to file a Second Amended Complaint (Filing No. 33), without leave of the Court. Defendants objected to the Court's consideration of that pleading. The Court ordered that only the Amended Complaint would be considered. (See Filing No. 41). The Court also granted in part and denied in part two of the Defendants' motions to dismiss, and instructed the Defendants to file an answer, without prejudice to assertion of any colorable 12(b) motions. Furthermore, the Court stated that if Thurber was attempting to assert a state-law age discrimination claim, the Court would not exercise its discretion to extend supplemental jurisdiction.¹ (Filing No. 41, 9 n.6). The Defendants have filed an Answer (Filing No. 45)

¹ It appears to the Court that Thurber received his right-to-sue letter from the Nebraska Equal Opportunity Commission on October 20, 2006. Filing No. 51, ex. C. That letter indicates that there is a ninety-day deadline for filing an action in state district court. If Thurber believes that he has an actionable age discrimination claim, he may pursue such a claim in state court.

to the Amended Complaint, and another Motion to Dismiss (Filing No. 46). After that motion to dismiss was fully briefed by both sides, Thurber filed his pending Motion for Permission of Court to File Amended Complaint, but informed the Court that the Defendants do object to any further pleading amendments.

In accordance with the Court's previous Memorandum and Order, the only cause of action before the Court is the federal sex-discrimination claim filed pursuant to Title VII, 42 U.S.C. §§ 2000e *et seq.*, and, therefore, Thurber's motion to amend or supplement his Complaint to include the state-law age discrimination action will be denied.

IT IS ORDERED:

1. The Motion for Permission of Court to File Amended Complaint (Filing No. 51), with regard to Counts II and III of Thurber's proposed Third Amended Complaint (Filing No. 53), is denied; and
2. Any objection to Thurber's Motion for Permission of Court to File Amended Complaint, with regard to paragraphs 1–14 of the proposed Third Amended Complaint, shall be filed on or before December 11, 2006.

DATED this 1st day of December, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge